



## Request for Council Action

**TO:** Mayor and City Council  
**THROUGH:** Tim Murray, City Administrator  
**FROM:** Mark DuChene, City Engineer  
**MEETING DATE:** October 23, 2018  
**SUBJECT:** Approve Easement Agreement with Dakota, Minnesota & Eastern Railroad Corporation (d.b.a. Canadian Pacific) for TH 60 Reconstruction Project – City Contract 2019-03

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### **Background:**

As part of the 2019 TH 60 Reconstruction Project, City Contract 2019-03, the City is planning to construct a sidewalk on both the north and south sides of TH 60 which includes crossing the railroad property between Irving Avenue and 8<sup>th</sup> Ave NW. This railroad is under the jurisdiction of Dakota, Minnesota & Eastern Railroad Corporation (d.b.a. Canadian Pacific) and the railroad requires an easement agreement in order to construct sidewalk on the RR property.

### **Recommendation:**

Approve Easement Agreement with Dakota, Minnesota & Eastern Railroad Corporation (d.b.a. Canadian Pacific) for TH 60 Reconstruction Project – City Contract 2019-03

### **Attachments:**

- Dakota, Minnesota & Eastern Railroad Corporation (d.b.a. Canadian Pacific) Easement Agreement No. 50676

## EASEMENT AGREEMENT NUMBER 50676

Date: \_\_\_\_\_, 2018

In consideration of the sum of Ten Dollars and No Cents (\$10.00) the receipt whereof is hereby acknowledged,

**DAKOTA, MINNESOTA AND EASTERN RAILROAD COMPANY**, a Delaware corporation doing business as Canadian Pacific, having its principal place of business at 120 South Sixth Street, Minneapolis, Minnesota 55402, ("**Grantor**")

hereby grants unto

The City of Faribault, a MINNESOTA Municipality, ("**Grantee**"),

A permanent easement for the construction and maintenance of a sidewalk, the "Sidewalk," over, and upon the following described real property in Rice County, Minnesota:

All that part of the Northwest Quarter of Section 31, Township 110 North, Range 20 West, in the City of Faribault, County of Rice, Minnesota, being triangular in shape and described as follows:

Beginning at a point where the west line of the Northeast Quarter of said Section 31 intersects the westerly extension of the south line of Block 9, McClelland's Addition to Faribault; thence south along said west line of said Northwest Quarter to the northeasterly extension of the northwesterly right of way line of Fourth Street; thence northeasterly along said northeasterly extension of said northwesterly right of way line to its intersection with the westerly extension of the south line of said Block 9, containing 28 square feet, more or less.

Together with temporary easements over, upon and across the following described land:

A strip of land 10 feet in width, being the south 10 feet of Lot 6, Block 9, in McClelland's Addition to Faribault, Rice County, Minnesota, together with the westerly extension of said 10 foot wide strip, terminating at the west line of the Northwest Quarter of Section 31, Township 110 North, Range 20 West; said 10 foot wide strip of temporary easement being bounded on the east by the following described parcel of record:

Part of Lots 4, 5, 6, & 7, Block 9, in McClelland's Addition to Faribault, Rice County, Minnesota, described as follows: Beginning at the southwest corner of the East 40.00 feet of said Lot 7; thence South 89 degrees 17 minutes 01 second West, along the southerly line of said Block 9 (for purposes of this description

bearings are assumed and based on said South line being South 89 degrees, 17 minutes 01 second West), 34.63 feet; thence North 04 degrees, 30 minutes, 21 seconds West, 330.30 feet to a point on the north line of said Block 9; thence North 89 degrees, 15 minutes, 22 seconds East, along said North line, 59.67 feet to the Northwest corner of the East 40.00 feet of said Lot 4; thence South 00 degrees, 09 minutes 30 seconds East, along the West line of the East 40.00 feet of said Lots 4 and 7, a distance of 329.63 feet to said point of beginning;

Also

Those portions of Lot 5, Block 10, McClelland's Addition to Faribault, portions of the Northwest Quarter of Section 31, Township 110 North, Range 20 West, and portions of the Northeast Quarter of Section 36, Township 110 North, Range 21 West, all in Rice County, Minnesota, described more particularly as follows:

A strip of land 8 feet in width, being the north 8 feet of Lot 5, Block 9, in McClelland's Addition to Faribault, Rice County, Minnesota, together with the westerly extension of said 8 foot wide strip, terminating at the southeasterly right of way line of Fourth Street; said 8 foot wide strip of temporary easement being bounded on the east by the following described parcel of record:

Those parts of Lots 3, 4 and 5, Block 10, McClelland's Addition in the City of Faribault, Rice County, Minnesota, described as follows: Beginning at a point in the north line of said Block 10, a distance of 18.00 feet westerly from the northeast corner of said Lot 3 (for purposes of this description bearings are assumed and based on said north line being North 90°00'00" West); thence South 0°33'30" West, parallel with and 18.00 feet westerly from the east line of said Lot 3, a distance of 100.00 feet to a point in a line 100.00 feet southerly from and parallel with the said north line of Block 10; thence North 90°00'00" West, along said parallel line, 114.00 feet to the southwest corner of said Lot 4; thence North 4°14'32" West, 100.27 feet to a point in said north line of Block 10; thence North 90°00'00" East, along said north line 122.40 feet to the point of beginning.

Temporary easements contain a total of 1,300 square feet, more or less.

(the "**Property.**")

The easement rights granted herein for the Sidewalk shall continue only so long as used for such purposes.

The Grantor reserves unto itself, and its successors and assigns, the right and privilege to use said Property for the maintenance and operation of railroad tracks and facilities, including the right to permit other parties to use said Property, and further reserving the right and privilege to use said Property for any and all other purposes that are not inconsistent with the use thereof for the purpose or purposes permitted by this indenture, and further reserving the right to prevent the placement or maintenance of any Sidewalk facility upon said Property in a manner which would unreasonably interfere with the maintenance and safe and continuous operation of railroad tracks and facilities.

The Grantor reserves the title to said Property to itself, and the Grantee's maintenance and use for the above purposes upon said Property, however long continued, shall not vest in the Grantee rights adverse to those of the Grantor other than those granted by this indenture.

The Grantee, after first securing all necessary public authority, shall at the Grantee's sole expense, install and thereafter maintain the Sidewalk upon and across the Property and underneath or across any railroad tracks located thereon at the above-described location in a manner satisfactory to the Grantor.

The Grantee shall be responsible for determining the location and existence of any pipes, wires, conduits, sewers, piling or other obstructions to the construction of the Grantee's Sidewalk and shall indemnify, hold harmless and defend the Grantor from and against any and all liability for damage to the foregoing pipes, wires, conduits, sewers, piling or other obstructions, if any, caused by the construction or

maintenance of the Grantee's Sidewalk. The Grantor makes no representation by the granting of this indenture that its property is free of any such pipes, wires, conduits, sewers, pilings or other obstructions.

The Grantee shall not carry on any work in connection with the installation, maintenance, repair, changing or renewal of the Sidewalk or in close proximity to any railroad track at the above-described location until: (i) it shall have given the Grantor at least three (3) days' written notice, and (ii) an authorized representative of the Grantor shall be present to supervise same. Upon bills being rendered therefor, the Grantee shall promptly reimburse the Grantor for all expenses incurred by it in connection with such supervision, including all labor costs for flagmen supplied by the Grantor to protect railroad operations, and for the entire cost of the furnishing, installation and later removal of any temporary supports for said tracks.

The Grantee, at the Grantee's sole expense, whenever notified to do so, shall promptly make such repairs to or changes in the Sidewalk, including changes in location, as the Grantor shall for any reason deem necessary. The Grantor shall have the right, at its election, to make emergency repairs to the Sidewalk, and in such event the Grantee, upon bills being rendered therefor, will promptly reimburse the Grantor for all expenses incurred in connection therewith.

The Grantee assumes all risk of damage to or destruction of the Sidewalk through any cause whatsoever while located upon and across the Property.

The Grantee shall:

- (a) be familiar with the requirements of, comply with, and secure at the Grantee's own expense any permits or licenses required by, all applicable laws, regulations, ordinances, and standards, including without limitation all Environmental Laws;
- (b) upon written request by the Grantor, provide the Grantor with the results of appropriate reports and tests and with any other applicable documents to demonstrate that the Grantee has complied with all Environmental Laws relating to the Property;
- (c) not in any manner cause or allow the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of the Resource Conservation and Recovery Act, 42 U.S.C. ' 6901 et seq. or any similar state statute or local ordinance;
- (d) not, without prior written disclosure to and approval by the Grantor, Use or authorize the Use of any Hazardous Substance on the Property;
- (e) not cause or allow the Release or threat of Release of any Hazardous Substance on, to, or from the Property;
- (f) promptly notify the Grantor of any actual or suspected Release of any Hazardous Substance on, to, or from the Property, regardless of the cause of the Release;
- (g) promptly provide the Grantor with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, claims, causes of action, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, or other federal, state or local agency or authority, or any other entity or individual, concerning any Release of a Hazardous Substance on, to or from the Property, or any alleged violation of or responsibility under any Environmental Law relating to the Property; and
- (h) promptly take all necessary action in Response to any Release or Use of a Hazardous Substance at the Property that gives rise to any liability, claim, cause of action, obligation,

demand, fine, penalty, loss, judgment or expense under any Environmental Law, or causes a significant public health or workplace effect, or creates a nuisance; and

- (i) assume and pay any fee, tax, assessment or other charge or expense levied against the Property or incurred by the Railroad in connection with installation, use or existence of the Sidewalk upon the Property.

To the extent permitted by applicable law, the Grantee hereby releases and agrees to indemnify, hold harmless and defend the Grantor and its directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors and assigns, or anyone acting on its behalf or their behalf, from and against any and all Claims (including without limitation any Claims arising under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) of every kind, past, present and future, existing and contingent, known and unknown, arising from any injury to persons, firms or corporations whomsoever, including injuries resulting in death, and damage to property whatsoever, wherever such persons or property are located, caused by or attributable to, in whole or in part, any act or omission of the Grantee (or the Grantee's employees, agents, representatives, or invitees) in connection with the exercise of the right and privilege herein granted, including without limitation the Use or Release of Hazardous Substances by the Grantee and the breach by the Grantee of any of its warranties, representations or covenants. The Grantee's obligations hereunder shall survive the termination or expiration of this easement.

As used herein,

- (a) "**Claim**" or "**Claims**" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultants' fees, response costs, remedial action costs, cleanup costs and expenses which may be related to any Claims);
- (b) "**Environmental Law**" or "**Environmental Laws**" means the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act (the Clean Water Act), 33 U.S.C. § 1251 et seq. the Clean Air Act, 42 U.S.C. § 7401 et seq., and the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted.
- (c) "**Hazardous Substance**" or "**Hazardous Substances**" means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law;
- (d) "**Release**" or "**Released**" means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or spreading of any Hazardous Substance into the environment, as "environment" is defined in CERCLA;
- (e) "**Response**" or "**Respond**" means action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Substance;
- (f) "**Use**" means to manage, generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of, or abandon a Hazardous Substance.

The Grantor does not warrant title to the above-described property, and the Grantee shall have no recourse against the Grantor in the event the Grantee shall be required, through the action of any third party, to either remove the Sidewalk from the Grantor's property or to make any payment to avoid such removal.

This indenture shall inure to the benefit of and be binding upon the successors and assigns of the Grantor and the Grantee.

**DAKOTA MINNESOTA AND  
EASTERN RAILROAD COMPANY**  
doing business as Canadian Pacific

By: \_\_\_\_\_  
Nikol R. Daniels  
Its: Specialist Leasing

STATE OF MINNESOTA )  
 ) ss:  
COUNTY OF HENNEPIN )

The foregoing easement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Nikol R. Daniels, Specialist Leasing of Dakota, Minnesota and Eastern Railroad Company, a corporation under the laws of the State of Delaware, on behalf of the corporation.

Notary Seal

\_\_\_\_\_  
Notary Public

**CITY OF FARIBAULT**

By: \_\_\_\_\_  
Kevin F. Voracek  
Its: Mayor

By: \_\_\_\_\_  
Timothy C. Murray  
Its: City Administrator

STATE OF MINNESOTA)  
 )SS  
COUNTY OF RICE )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Kevin F. Voracek and Timothy C. Murray, Mayor and City Administrator, respectively, of the City of Faribault, a municipal corporation organized under the laws of the State of Minnesota, on behalf of the City of Faribault, Grantee.

\_\_\_\_\_  
Notary Public

This instrument was drafted by:  
Nikol R. Daniels  
Real Estate Department  
Canadian Pacific Railway  
120 South Sixth Street, Suite 700  
Minneapolis, MN 55402